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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,769	04/13/2001	Takeski Yukitake	JEL-29186C-RE-DIV3	4229

7590 08/25/2004  
Stevens Davis Miller & Mosher LLP  
1615 L Street NW  
Suite 850  
Washington, DC 20036

EXAMINER
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LEE, RICHARD J

ART UNIT	PAPER NUMBER
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2613

DATE MAILED: 08/25/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/833,769

**Applicant(s)**

YUKITAKE ET AL.

**Examiner**

Richard Lee

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

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1. The applicants are informed again that the Statement Under 37 CFR 3.73(b) and the Assent of Assignee as filed are defective since both communications have failed to provide the required dates when signed.

The applicants make note at pages 12-13 of the amendment filed November 24, 2003 that both the Statement under 37 CFR 3.73(b) and the Assent of Assignee were filed and accepted in parent reissue application no. 09/559,627 without objection to absence of a date. The Examiner wants to point out that the absence of dates for the Statement under 37 CFR 3.73(b) and the Assent of Assignee in parent case 09/559,627 was overlooked by the Examiner, and consequently such omission of dates are not in fact acceptable in parent case 09/559,627. Objection was made to the Statement under 37 CFR 3.73(b) and the Assent of Assignee in parent case 09/559,627 as being defective in the Office Action dated January 15, 2004. Concerning the present case, it is still a requirement for the applicants to provide new signed and dated Statement under 37 CFR 3.73(b) and Assent of Assignee documents.

2. The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

It is to be noted again that the reissue declaration as filed is defective since it is a duplicate of that filed in parent case 09/559,627. The error(s) set forth and corrected in the present reissue application cannot be the same error(s) being corrected in the parent reissue application 09/559,627. The present reissue declaration must provide/state new error(s) for correction. By having the same error in multiple reissue applications, this violates 35 U.S.C. 251.

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The draft reissue declaration as provided along with the amendment filed November 24, 2003 for approval prior to execution is defective for the same reasons as above, mainly since this is a duplicate of that filed in parent case 09/559,627. The draft reissue declaration provides no new error(s) to be corrected that is different from that of parent case 09/559,627. It is to be noted also that the draft reissue declaration incorrectly makes reference to the present application filed May 30, 2001 as serial number 09/866,811. The correct serial number for the present application is **09/833,769, with a filing date of April 13, 2001**. Further, should the applicants make reference to "the specification filed July 20, 1994, serial number 08/278,010" instead of "the specification filed April 27, 2000, serial number 09/559,627" as shown at lines 6-7 of the draft reissue declaration filed November 24, 2003? The applicants are advised to carefully review the declaration to ensure that the new supplemental declaration to be filed does not include the same errors or any other potential error(s) that the Examiner may have overlooked.

3. Claims 1, 2, and 4-12 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any response to this final action should be mailed to:

Box AF

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

or faxed to:

(703) 872-9314, (for formal communications; please mark "EXPEDITED  
PROCEDURE") (for informal or draft communications, please label  
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal  
Drive, Arlington, VA., Sixth Floor (Receptionist).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Lee whose telephone number is (703) 308-6612. The Examiner can normally be reached on Monday to Friday from 8:00 a.m. to 5:30 p.m, with alternate Fridays off.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group customer service whose telephone number is (703) 306-0377.

  
RICHARD LEE  
PRIMARY EXAMINER

Richard Lee/rl

8/19/04